* **HIGH COURT OF DELHI : NEW DELHI**

\+ **W.P. (C) NO.13768/2006**

% **Judgment reserved on: August 29, 2007**
Judgment delivered on: September 17,2007

% Smt. Kiran Bala. ...Petitioner
Through: Mr. Mobin Akhtar, Advocates

versus

Union of India ...Respondent
Through: Mr. Ashwani Bhardwaj, Advocates

CORAM:

HON'BLE MR. JUSTICE A.K.SIKRI
HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether the Reporters of local papers may be allowed to see the judgment? No
2. To be referred to Reporter or not? No
3. Whether the judgment should be reported in the Digest? No

VIPIN SANGHI, J

1. The Petitioner has filed its petition under Article 226 of the Constitution of India to challenge the order dated 7th January 2005 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (The Tribunal) in O.A. No. 2743/2003 whereby the aforesaid O.A. filed by the Petitioner was dismissed by the Tribunal.

The Petitioner had approached the Tribunal seeking directions to the Respondents for the release of family pension to her from the date of expiry of her husband i.e. 17.9.2000 onwards. She also sought immediate compassionate appointment from the Respondents.

2. The Petitioner's late husband was initially appointed as a driver in the Implementation Committee, Cabinet Secretariat, Government of India, on 1.7.1989. Thereafter, he was appointed to the post of Staff Car Driver in the Ministry of Welfare on 15.1.1990, where he continued to work till the time of his death, i.e., on 17.9.2000. However, the engagement of the Petitioner were not on regular basis, but was only on temporary and adhoc basis.

3. After the demise of the husband of the Petitioner, she demanded family pension and appointment on compassionate ground from the Respondents. Since, there was no response from the Respondents, she initially preferred O.A. No. 2103/2003, which was disposed of on 7th August 2003 by the Tribunal with a directions to the Respondent to dispose of the representation of the Petitioner by a reasoned and speaking order.

4. The Respondents thereafter issued a communication dated 26.9.2003 stating that the late husband of the Petitioner Shri Kalu Singh was appointed as a Staff Car Driver in the Implementation Committee for the Commemoration of 40th

Anniversary of India's Independence and the Jawahar Lal Nehru Centenary, Cabinet Secretariat, with effect from 1.7.1989 on contract basis for the period up to 31.12.1989. With the winding up of said office, his service was dispensed with from the after noon of 31.12.89. He was thereafter appointed in the Ministry of Social Justice and Empowerment to the post of Staff Car Driver on purely temporary and ad-hoc basis for a period of six months with effect from 15.1.1990. This ad-hoc appointment was further extended for one year i.e. up to 14.7.1991. After this, there was no extension granted to him, as there was no vacancy and his appointment was not made after following the proper recruitment procedure. It was also stated that since the appointment of late Shri Kalu Singh was purely temporary and ad hoc and he was not holding a substantive post under rules, neither family pension nor compassionate appointment can be granted to the Petitioner. Even the Department of Personal & Training had taken the same view upon the reference made by Respondents to seek the advise in the matter.

5. The Petitioner was not satisfied with the said response and again approached the Tribunal by filing O.A. No. 2743/2003, which has been dismissed by the impugned order. Before the Tribunal, the submission of the Petitioner was that the Respondent had released various amounts towards Earned leaves, Central Government Employees Group Insurance Scheme, reimbursement

of medical expenses and GPF amount due to the Petitioner's husband. The Respondent had even initially entertained the application of the Petitioner for appointment to the post of ‘Wash Boy’ in Maduri Department Canteen with the Ministry of Social Justice and Empowerment. However, no appointment order was issued and she was also not given the family pension. It was, however, submitted that the husband of Petitioner was also given festival advance like regular employees. From the aforesaid, it was claimed that the late husband of the Petitioner was treated as regular employee for all purposes.

6. The Respondents stuck to their stand as communicated by them to the Petitioner on 26.9.2003, that the late husband of the Petitioner was not a regular and permanent employee but was appointed only on a temporary and ad hoc post. Merely because the husband of the Petitioner was granted certain privileges and benefits which are normally available to regular employees, and merely because certain deductions were made from his salary, that by itself did not make him a regular employee. Even though the Petitioner was not entitled to compassionate appointment, the case was sympathetically considered, when she applied for the post of ‘Wash Boy’ as aforesaid, and the same was not rejected at the threshold.

7. The Tribunal after considering the matter, rejected the

plea of the Petitioner and dismissed the application. The Tribunal held that since the late husband of the Petitioner was not appointed on regular post but was working merely on ad hoc post, simply because it was claimed that he had worked for a period of 10 years in that capacity, he cold not be treated as a regular employee. Regular appointment has to conform to the recruitment rules and appointments made regularly can only be made against a sanctioned post. The Petitioner's husband was not appointed by a process of selection for the post of Staff Car Driver in response to any advertisement. Merely because certain deductions were made from his salary that could not make the late husband of the Petitioner a regular employee of the Respondent.

8. Family pensions and compassionate appointment, is admissible only to the dependents of regularly appointed permanent employee of the Government. Neither family pension nor compassionate appointment could have been granted to a person appointed on ad hoc or casual basis without following any selection procedure against a sanctioned post.

9. The Hon'ble Supreme Court in a Constitution Bench decision in ***Secretary, State of Karnataka and Others vs. Uma Devi and Others***, (2006) 4 SCC 1, has held that ad hoc appointees, who are recruited without complying with the selection process cannot be regularized.

10. In view of the aforesaid, we are of the view that the decision of the Tribunal impugned before us is correct and that it does not call for any interference in exercising our powers of judicial review.

11. We, accordingly, dismiss the petition leaving the parties to bearing their own respective costs.

VIPIN SANGHI, J

A.K. SIKRI, J

September 17, 2007
P.K. BABBAR